

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 JAN 22 PM 2:47

IN THE MATTER OF:)
)
Guy Zwahlen)
45 W. Louise Avenue) Docket No.
Salt Lake City, UT 84115,) CAA-08-2007-0004
)
Respondent.)
_____)

EPA REGION VIII
HEARING CLERK

COMPLAINANT'S PRE-HEARING EXCHANGE

Complainant United States Environmental Protection Agency-Region 8 ("EPA-Region 8") files this Pre-Hearing Exchange per Judge William B. Moran's Pre-Hearing Order dated November 21, 2007.

I. Witnesses and Documents/Exhibits

A. Witnesses

The following are the witnesses whom Complainant intends to call to testify, together with a brief summary of the expected testimony of each proposed witness. Complainant reserves the right to add additional witnesses, as allowed by Judge Moran, if further information comes to light or as necessary for rebuttal or impeachment purposes.

1. Gregory Zurla (Fact Witness)
Former CFC Enforcement Coordinator¹
Air & Toxics Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. EPA-Region 8
Denver, Colorado

Ms. Zurla will lay the foundation for Complainant's Exhibits 1, 2, and 7-15. In addition, he will testify about: (1) how

¹Mr. Zurla is now the Supervisor of the Technical Services Unit, Information Systems Program, Office of Technical and Management Services, at U.S. EPA-Region 8.

Respondent violated statutory and regulatory requirements relating to the protection of stratospheric ozone, as alleged by Complainant; and (2) how Complainant took into account the facts of this case and the penalty assessment criteria in Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. Section 7413(d), to calculate the penalty.

2. Ted Owens (Fact Witness)
Special Agent
Criminal Investigation Division
U.S. EPA
Salt Lake City, Utah

Mr. Owens will lay the foundation for Complainant's Exhibits 3-6. In addition, he will testify about: (1) how he learned of Respondent's violations, as alleged by Complainant; and (2) what he found during his observation of Respondent's building demolition project referenced in the Complaint in this matter.

3. Julius Banks (Expert Witness)
Program Manager
Stratospheric Protection Implementation Branch
Global Programs Division
U.S. EPA
Washington, DC

Mr. Banks will lay the foundation for Complainant's Exhibit 16. In addition, he will testify about: (1) the purpose of the statutory and regulatory requirements relating to the protection of stratospheric ozone that Respondent violated, as alleged by Complainant; (2) industry practices relating to the proper evacuation and disposal of rooftop air conditioning units ("RTUs"); and (3) the contents of the RTUs that are the subject of the Complaint in this matter.

B. Exhibits

In addition to documents already filed with the Regional Hearing

Clerk in this matter, Complainant intends to offer the following documents into evidence as exhibits.² Complainant reserves the right to identify additional exhibits, as allowed by Judge Moran, if further information comes to light or as necessary for rebuttal or impeachment purposes.

1. Print-out of Utah Department of Commerce Business Entity Search, Total Interior Demolition (September 5, 2007).
2. Print-out of Dun and Bradstreet Company Profile, Total Interior Demolition (September 5, 2007).
3. Utah Division of Environmental Response and Remediation Incident Notification, Number 6122, reporting incident beginning July 11, 2006.
4. Digital photographs taken by Bowen Call, Environmental Scientist III, Air Toxics, Lead-Based Paint, Asbestos, and Small Business Section, Division of Air Quality, Utah Department of Environmental Quality, at the site of Respondent's building demolition project referenced in the Complaint in this matter.
5. Report of Action Done by SA Ted Owens on lead 0802-M005 (TID Demolition), authored by Ted Owens, Special Agent, Criminal Investigation Division, U.S. EPA, Salt Lake City, Utah, with informant's name and a separate telephone number redacted (September 13, 2006).

²Complainant notes that it originally filed Exhibit 12 with the Regional Hearing Clerk along with the Complaint in this matter. Complainant is listing that Exhibit here and providing a copy of same for the convenience of Judge Moran and Respondent.

6. Prints of photographs taken by Ted Owens, Special Agent, Criminal Investigation Division, U.S. EPA, Salt Lake City, Utah, at the site of Respondent's building demolition project referenced in the Complaint in this matter.
7. Microsoft Virtual Earth aerial map entitled, "Former Fred Meyer Building, 4091 West 3500 South, West Valley, Utah, Count of A/C Roof Top Units (RTUs)" (obtained July 30, 2007).
8. Mapquest aerial map of 4091 W 3500 S, West Valley City, UT, entitled, "TID Demolition in Progress" (obtained July 30, 2007).
9. Request for Information Regarding Cameron Construction, Pursuant to Section 114(a) of the Clean Air Act, from Michael T. Risner, Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. EPA-Region 8 to John Cameron, Owner-President, Cameron Construction (June 28, 2007).
10. Supplemental Response to Request for Information Under 42 U.S.C. Section 7414(a) - Dated June 28, 2007, submitted by Cameron Construction Company (July 26, 2007).
11. Request for Information Regarding Total Interior Demolition, Pursuant to Section 114(a) of the Clean Air Act, from Michael T. Risner, Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. EPA-Region 8 to Guy Zwahlen, President, Total Interior Demolition (June 28, 2007).

12. Letter from Guy Zwahlen, President, Total Interior Demolition regarding "Request for Information at Former Fred Meyer Building 4091 West 3500 South West Valley City, Utah" (July 11, 2007).
13. Request for Information Regarding Nova Consulting, Inc., Pursuant to Section 114(a) of the Clean Air Act, from Michael T. Risner, Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. EPA-Region 8 to Cary Asper, Vice-President, Nova Consulting Group, Inc. (June 28, 2007).
14. Letter from Paul Johnson, Director of Operations, Nova Consulting Group, Inc. regarding "Request for Information, Former Fred Meyer Building, 4091 West 3500 South, West Valley City, Utah" (undated, received by EPA August 26, 2007).
15. Complainant's Statement as to Determination of Proposed Penalty, In the Matter of: Guy Zwahlen, Docket No. CAA-08-2007-0004.
16. Resume of Julius Banks.

II. Complainant's Statement as to Determination of Proposed Penalty

Complainant's Statement as to Determination of Proposed Penalty, In the Matter of: Guy Zwahlen, Docket No. CAA-08-2007-0004, is attached hereto as Complainant's Exhibit 15.

III. Complainant's Statement on the Applicability of the Paperwork Reduction Act

The requirements of the Paperwork Reduction Act ("PRA"), 44 U.S.C. Section 3501, et seq., including Section 3512 of the PRA, do not apply to this proceeding.

This case involves Clean Air Act Section 114 Information Requests ("Information Requests") sent by EPA to Respondent and two companies, and their responses thereto. Under the PRA and its implementing regulations, in order to qualify as a "collection of information" subject to the requirements of the Act, an information request must contain identical questions posed to ten or more persons. 44 U.S.C. Section 3502(3)(A)(i) and 5 U.S.C. Section 1320.3(c). In this case, two of the three Information Requests sent by EPA contained identical questions. Therefore, the Information Requests sent by EPA did not contain identical questions posed to ten or more persons.

Also, the requirements of the PRA do not apply to collections of information during the conduct of an administrative action or investigation involving an agency against specific individuals or entities once a case file or the equivalent is opened with respect to a particular party, unless the collection of information was undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry. 44 U.S.C. Section 3518(c)(1)(B)(ii) and (c)(2), and 5 C.F.R. Section 1320.4(a)(2) and (c). In this case, EPA sent an Information Request to Respondent, (a specific individual), and two companies (specific entities), after it opened a case file with respect to Respondent, and during the conduct of an administrative action or investigation. Further, EPA

sent Information Requests only to Respondent and two companies, not to a category of individuals or entities, such as a class or an industry.

Finally, Complainant knows of no Office of Management and Budget control number involved in this case.

IV. Complainant's Views on Place and its Availability for Hearing, and Estimate of Time Needed to Present its Direct Case

For the hearing, Complainant agrees to travel to the County in which the Respondent resides or conducts the business which the hearing concerns, and is available March 25-28, April 22-25, May 21-23, and throughout the month of August, 2008. Complainant estimates it will need one to one and a half days to present its direct case.

Respectfully submitted,

1-22-08
Date

Jessie Goldfarb
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IN THE MATTER OF:
DOCKET NO.:

Guy Zwahlen
CAA-08-2007-0004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached COMPLAINANT'S PRE-HEARING EXCHANGE was hand-carried to the Regional Hearing Clerk, EPA-Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via Pouch Mail to:

Judge William B. Moran
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, DC 20005,

and that a true copy of the same was sent via regular U.S. mail to:

Clay W. Stucki, Esq.
Bennett Tueller Johnson & Deere
3165 East Millrock Drive, Suite 500
Salt Lake City, UT 84121-5027

1/22/2008
Date

Judith McTernan
Judith McTernan